IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1144 OF 2004

Surajmal Rameshwar Khandelwal
and others. ... Appellants.

Versus.

Mishrimal Chimanaji Jain
(since deceased through LRs.)
Smt.Shantabai Mishrimal Jain & ors. ... Respondents.

Shri V.G.Mujumdar for the Appellants.

Shri S.J.Rairkar for the Respondents Nos.1 to 4.

CORAM : ABHAY S. OKA, J.

DATED : 2nd March, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. There is a decree for specific performance passed in favour of the Respondents/Plaintiffs which is confirmed by the Appellate Court.

2. Shri Mujumdar submitted that the suit was barred by limitation. He has relied upon the documents which are annexed to the Civil Application No.1779 of 2004. He submitted that as per the terms of the suit agreement, the conveyance was to be executed within three months from the date of obtaining the permission of the Cooperative Society. Civil 'Application No.1779 of 2004 is filed by the Appellant for production of additional evidence. Relying upon the documents annexed to the said Civil Application, Shri Muzumdar submitted that on 1st April 1987 the society gave consent and separate letter was issued on the same day by the Society in favour of the Appellant in which it is stated that the

copy of the permission has been handed over to the Respondents/original Plaintiffs.

3. Apart from the fact that in the Courts below no case was made out by the Appellant about the existence of such letters and apart from the objection to the maintainability of the said application, it is to be noted here that the socalled consent letter dated 1st April 1987 is on the printed letter head of the Cooperative society and the second letter of the same date allegedly issued by the Chairman of the said Cooperative society is on an ordinary white paper. Even if the additional evidence in the form of the said two letters is allowed to be produced, it is apparent that the said two documents will not prove the fact that on 1st April 1987 itself the original Plaintiff was made aware about the grant of consent by the society.

4. Therefore, taking into consideration even the said documents which are sought to be produced for the first time in the Second Appeal, there is no merit in the contention that the suit was barred by limitation.

5. There is no merit in the Second Appeal and the same is dismissed with no order as to costs.

Judge.